



**HILDA CANTÚ MONTÓY**  
City Attorney

November 18, 2003

**MEMORANDUM**

**To:** Mayor Alan Autry  
Tom Boyajian, Council President  
Councilmembers  
Daniel Hobbs, City Manager

**Re: Updated Guidelines for Mayor, Council, and City Employee Participation in Political Activities.**

As the election season approaches, this memorandum serves to update the guidelines for Mayor, Councilmember, and City employee participation in political activities under state and local laws. This memorandum will be placed on the City's website for convenient reference. We ask the City Manager to direct employees to this website.

**1. Government Code Sections 3201 et seq.**

The state legislature has declared that political activities of public employees are of significant statewide concern. Chapter 9.5 of the Government Code commencing with Sections 3201 et seq., enumerates the prohibited political activities.<sup>1</sup> Chapter 9.5 applies to City employees and to City elective officers (Mayor and Councilmembers) unless the context states otherwise. The prohibited political activities include the following:

- a. Unlawful use of office, influence, or authority;
- b. Solicitation of political funds or contributions from other officers, employees, or from persons on employment lists from the same local agency, or from which the candidate is seeking office;

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<sup>1</sup> All statutory references are to the Government Code unless otherwise noted.

- c. Arranging an increase in compensation or salary in exchange for a contribution to a committee or person seeking office;
- d. Participation in political activities while in uniform; and
- e. Participation in political activities during work hours on City premises, as governed by the local rules and regulations.

**2. The City Charter regulates when a candidate may solicit or accept campaign contributions, and prohibits City elective officers and employees from using City resources for political purposes or from engaging in political activities during compensated work hours.**

Charter Section 309 limits the time period when a candidate may solicit or accept campaign contributions. Candidates may begin soliciting or accepting contributions from the date set by law for filing nomination papers until the end of the election year.

CHARTER SECTION 309. OFF-YEAR CONTRIBUTIONS PROHIBITION. No mayoral candidate or Council candidate, or any committee controlled by such person shall solicit or accept any contribution in support of the candidate's election prior to the date fixed by law for the filing of nomination papers with respect to such election, or the following year in which such election is held.

Charter Section 813 prohibits City elective officers and employees from engaging in political activities during compensated work hours or from using City resources for political purposes.

CHARTER SECTION 813. POLITICAL ACTIVITIES. Except as otherwise provided by the general laws of this state heretofore or hereafter enacted, no person in the Administrative Service, or seeking admission thereto, shall be employed, promoted, demoted or discharged or in any way favored or discriminated against because of political opinions or affiliations or because of race, sex, or religious belief.

No officer or employee of the city, and no candidate for any city office shall, directly or indirectly, solicit any assessment, subscription, or contribution, whether voluntary or involuntary, for any political purpose whatever from anyone on the eligible lists or holding any position in the eligible lists or holding any position in the Administrative Service.

This provision has been interpreted to prohibit telephone calls, faxes, and personal contacts for political purposes during business hours at City Hall, or during a City elective officer's or employee's hours of duty on City premises.

### **3. Fresno Municipal Code.**

Charter Section 813 does not prevent a City employee from engaging in activities described in Fresno Municipal Code Section 2-1504.

#### **SECTION 2-1504. PERMISSIBLE POLITICAL ACTIVITIES.**

The limitations on political activities imposed by Section 813 of the Charter shall not be deemed to prevent any person who holds a position in the administrative service, or whose name is on any register for appointment to a position in the administrative service, from

- (1) Attending a political meeting;
- (2) Enjoying entire freedom from all interference in casting his vote;
- (3) Seeking or accepting election or appointment to public office;
- (4) Seeking signatures to any initiative or referendum petition affecting his rates of pay, hours of work, retirement, civil service, or other working conditions provided such activity is not carried on during hours of work.

City employees may not engage in political activities during work hours. If a City employee intends to engage in political activities during his or her regular work hours, he or she must submit a written leave request and obtain the supervisor's authorization before engaging in political activities.<sup>2</sup>

### **4. Conflict of Interest Laws.**

City elective officers and employees have a right to run for public office, and cannot be required to take a leave of absence to run for public office. City elective officers and employees who are candidates for City elective office, remain subject to the conflict of interest provisions under the Political Reform Act.<sup>3</sup> Conflicts of interest may also exist under common law. The test is whether there is the possibility that an official's private interests might be enhanced through official action. Expressed another way, City elected officers and employees are obligated by virtue of their office to discharge their responsibilities with integrity and fidelity. For a violation of the common law conflict of

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<sup>2</sup> This is not to imply that political activities on City facilities is permitted during non work hours. It only underscores particular sensitivity to normal work hours.

<sup>3</sup> Section 81000 et seq.

interest, a court may order the unwinding of any transaction involved, disgorgement of profit, and award damages, as well as costs and attorney's fees.<sup>4</sup>

**5. Civil and Criminal Penalties for Using Public Funds to Support or Oppose a Candidate or Ballot Measure.**

State law prohibits the use of public funds to support or oppose a candidate or ballot measure. The prohibition is not limited to the use of public moneys, but also the use of City facilities, staff, or equipment, including the City website, telephones, computers, e-mail accounts, vehicles, copy machines, and any other City equipment.<sup>5</sup> City elective officers and employees may be required to reimburse the City for the value of the resources<sup>6</sup> and may be found criminally liable for misappropriation of public funds.<sup>7</sup> To assist the elective officers and employees as to the permissible and prohibited political activities we have prepared a list of do's and don'ts in Attachment "A." The list is by no means exhaustive, but is intended to provide general guidelines for engaging in political activities.

Respectfully submitted,

TEI YUKIMOTO

Deputy City Attorney

Attachment

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<sup>4</sup> See League of California Cities, "Providing Conflict of Interest Advice Under the Political Reform Act," February of 1999, p. 148, and "Conflicts of Interests" prepared by the Office of Attorney General 1998, p. 90-91.

<sup>5</sup> *Stanson v. Mott* (1976) 17 Cal.3d 206; *League of Women Voters v. Countywide Crim. Justice Coordinating Com.* (1988) 203 Cal.App.3d 529.

<sup>6</sup> *Choice in Education League v. Los Angeles Unified School District* (1993) 17 Cal.App.4th 415.

<sup>7</sup> See *People v. Battin* (1978) 77 Cal.App.3d 635, where county supervisor was prosecuted for engaging in campaign activities during county business hours using county facilities. A misuse of public funds was deemed a general intent crime, affecting any dollar amount, no matter how small.

## PRACTICAL GUIDE FOR CITY MAYOR, COUNCILMEMBER AND EMPLOYEE PARTICIPATION IN POLITICAL ACTIVITIES

The most important rule to remember is that the Mayor, Councilmembers and employees may not use public funds, such as official City time, facilities, or other resources to support or oppose a candidate or ballot measure.

This list is by no means exhaustive of the permissible and prohibited political activities. The City Attorney's Office should be consulted whenever the City elective officer or employee has any concerns as to whether the City may engage in a particular course of conduct as part of official City business. The City Attorney's Office does not provide legal advice to candidates for elective office or private citizens on campaign matters.

### **A. City elective officers and City employees may not:**

- Use public funds to "take sides" to influence the electorate on a ballot measure campaign that has qualified for the ballot.
- Distribute campaign literature through the City's internal mail system.
- Send or receive campaign related e-mails on City computers.
- Place campaign literature on the City's web page, or on other City premises.
- Create a link from the City website to a website containing campaign materials.
- Use City copy machines, telephones, fax machines, computers, stationary, or other City resources for campaign purposes.
- Direct City staff to walk precincts, draft campaign ads, or carry out other campaign related tasks during compensated work hours.
- Urge City employees to vote for a candidate or ballot measure during compensated work hours.
- Participate in political activities while in uniform.
- Use public funds to attend a political fundraiser.

- Directly or indirectly solicit campaign contributions from other local officials or employees, unless the solicitation is part of a general effort that incidentally includes local officials and employees.<sup>8</sup>

**B. City elective officers and City employees may:**

- Use public funds to develop a measure for the ballot to present to Council for legislative action.
- Use public funds to prepare and disseminate an accurate, fair, and impartial analysis of a measure that has qualified for the ballot.
- Use public funds to lobby the state legislature to aid or prevent passage of state legislation that will affect the City as directed by Council.<sup>9</sup>
- Have Council adopt a resolution to support or oppose a ballot measure at an open meeting that does not expressly advocate the passage or defeat of the ballot measure.
- Take a position or work on a campaign during their personal time.
- Make campaign contributions to a candidate or local ballot measure with their personal funds.
- Attend a campaign fundraiser at their own personal expense during personal time.
- Make public appearances during their own personal time to advocate a ballot measure or candidate.
- Participate in campaign activities at City facilities that are open and available for expression of all political viewpoints, such as sidewalks, parks, and areas in front of City Hall during their personal time.

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<sup>8</sup> Gov. Code § 3205(a).

<sup>9</sup> Gov. Code § 50023.